

Judge Bradford, cont.

ana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

He is Chair of the Indiana Pro Bono Commission; a member of the Indiana Bar Foundation and McKinney School of Law Alumni Association Boards; a Senior Distinguished Fellow of the Indianapolis Bar Association; and teaches at various seminars on a variety of legal topics. From 2005 to 2007, Judge Bradford hosted “Off the Bench with Judge Cale Bradford,” a legal commentary program on Marion County’s government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary’s policies on technology and electronic case management. Judge Bradford currently serves as an adjunct instructor in forensic science and the law at Indiana University Purdue University Indianapolis.

Judge Bradford is a former director of Indianapolis’s John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. Judge Bradford regularly attends St. Luke’s United Methodist Church. He and his wife, a full-day kindergarten teacher, have five children.

Judge Kirsch, cont.

Lacey Leadership Foundation.

Judge Kirsch and his wife, Jan, have two children.

Judge Altice, cont.

nal Division 2 from 2001 to 2012, he presided at 250 major felony jury trials, including 75 murder trials (seven death penalty trials).

While presiding over some of the most serious criminal matters in the state, Judge Altice also served as chair of the Marion Superior Court Criminal Term from 2005 to 2007, as a member of the Executive Committee for the Marion Superior Court from 2007 to 2009, and as Presiding Judge of the Marion Superior Court from 2009 to 2011. As the Presiding Judge, he was responsible for the administration of the Marion Superior Court, with an annual budget of \$50 million, and managed a court staff of more than 850 employees. He also hosted a TV show on the government access channel, titled “Off the Bench,” in which other civic leaders appeared as guests

to discuss public affairs.

Judge Altice moved to the civil division of the Marion Superior Court in 2013, where he officiated at 15 civil jury trials in Superior Court 5. Judge Altice was appointed chair of the Marion Court Civil Term in January 2015.

Throughout his judicial career, Judge Altice has held leadership roles in organizations that improve the administration of justice. He accepted special assignments from the Indiana Supreme Court on the Judicial Performance Task Force, which examined whether judicial evaluations might be useful in Indiana, and the Cameras in the Courtroom project, which allowed cameras in certain courtrooms under limited conditions.

During Judge Altice’s tenure on the Marion County Community Corrections Advisory Board, the Duval Work Release Center in Marion County was built and opened.

Judge Altice is a member of the Indiana Judges Association, the Indiana State Bar Association, and the Indianapolis Bar Association. He served on the Board of Directors of the Judicial Conference of Indiana, is a member and past president of the Sagamore American Inn of Court, was a member from 2010 to 2015 of the Indiana Judicial Conference Civil Bench Book Committee, and was a member and former chair of the Indiana Judicial Conference Community Relations Committee. In April 2015, Judge Altice was appointed to serve on an ad hoc Indiana Tax Court Advisory Task Force.

His community activities include prior service on the Board of Directors of these organizations: Indianapolis Police Athletic League; the Martin Luther King Community Development Corp.; and Coburn Place Safe Haven, a transitional housing facility for domestic abuse victims. Judge Altice also participated on the Super Bowl Legal Subcommittee. He has presented on legal and ethical issues for the Indiana Continuing Legal Education Forum, the Indiana Judicial Center, and various Indiana bar associations. In his spare time, he enjoys gardening, golf and reading.

He and his wife, Kris, an attorney who is General Counsel for Shiel Sexton, have two adult children.

Fast Facts About the Court

The Indiana General Assembly created a temporary appellate court in 1891 and a permanent Appeals Court in 1901. In 1971, voters approved a constitutional amendment making the Court of Appeals of Indiana a constitutional court.

■ The Court hears cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned.

■ Including judges serving senior terms, 127 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court’s first chief judge.

■ Judge Robert R. Altice, Jr., is the court’s newest judge. He took the oath of office on Sept. 2, 2015.

■ Because the Indiana Constitution provides “an absolute right to one appeal,” the Court of Appeals considers more than 2,000 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.

■ Eight women and three African Americans have served on the Court. Current Chief Judge Nancy H. Vaidik is the court’s second female chief judge.

■ The court decides most cases without holding oral argument. In 2014, for example, the court issued 2,146 majority opinions and heard 69 oral arguments.

■ The court considers and decides about twice as many criminal cases as civil cases each year.

■ The Court of Appeals affirmed trial court decisions in 82 percent of its cases in 2014. By case type, the affirmation rate was 88 percent of criminal cases; 92 percent of post-conviction appeals; and 69 percent of civil cases.

SYNOPSIS

Effective July 1, 2013, the Indiana General Assembly adopted a law allowing for the expungement of certain convictions from an individual’s criminal record if the individual meets certain requirements. The instant matter is a civil case relating to the General Assembly’s intent concerning the application of certain portions of the expungement law.

On April 6, 2009, J.S. was convicted of Class A misdemeanor operating a vehicle while intoxicated and Class A misdemeanor resisting law enforcement. In 2013, J.S. was convicted of Class D felony operating while intoxicated with a prior conviction. As a result of his 2013 conviction, J.S., who had held a commercial driver’s license (“CDL”), received a lifetime prohibition from ever carrying a CDL.

Following the General Assembly’s adoption of the expungement law, on Feb. 27, 2014, J.S. petitioned to have his April 6, 2009 convictions for Class A misdemeanor operating a vehicle while intoxicated and Class A misdemeanor resisting law enforcement expunged. At the time J.S. filed his petition, he had two pending post-conviction petitions challenging his 2009 convictions. J.S.’s petition indicated that the prosecutor agreed to waive the requirement that J.S. not commit or be convicted of any crime within the five preceding years and that expungement of 2009 convictions would resolve his pending petitions for post-conviction relief.

On July 7, 2014, the trial court granted J.S.’s petition and ordered that J.S.’s 2009 convictions be expunged. In granting J.S.’s petition, the trial court also held that the Indiana Bureau of Motor Vehicles (“BMV”) was prohibited from disclosing J.S.’s now-expunged conviction for operating while intoxicated to the Commercial Driver’s License Information System as is required by existing federal and Indiana law.

On Nov. 10, 2014, the BMV filed a Trial Rule 60(B) motion for relief from judgment. In this motion, the BMV argued that if it were to comply with the trial court’s July 7, 2014 order, it

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Court of Appeals of Indiana

Hearing oral argument at
Ben Davis High School Career Center
Monday, Dec. 7, 2015 @ 1 p.m.



State v. J.S.
16A04-1503-MI-89

On Appeal from Decatur Superior Court
The Honorable Matthew Bailey, Judge

Court of Appeals Mission Statement:

“To serve all people by providing
 equal justice under law”

Social Media and the Courts: An Unresolved Tension



Sometimes we're so steeped in things we don't really notice them. Take social media; we spend so much time texting, tweeting,

Facebooking, etc., that it's like water to a fish – just part of our world.

But Courts don't swim so easily in that environment. After all, social media is frothy, effervescent and bubbling with **now**. Courts are sober, slow and cautious.

Nor are Courts well suited to another defining characteristic of new media: the "anything goes" quality of so much Facebook, Twitter and YouTube content.

Yet Courts aren't blind to technology, as proved by even a quick glance at the Indiana judiciary's website, ***courts.in.gov***.

As further evidence, one-third of ranking Court officials who responded to a national survey on new media said they have used social media in either their professional or personal lives.

Still, the question arises: Can Courts

Synopsis, cont.

would be violating existing federal and Indiana law. The trial court conducted a hearing on the BMV's motion on Jan. 16, 2015. On Feb. 2, 2015, the trial court issued an order in which it denied the BMV's motion. This appeal follows.

The parties will present arguments pertaining to whether (1) the portion of the trial court's order that prohibits the BMV from complying with existing federal and Indiana law is consistent with the General Assembly's intent and (2) subsequent amendments made to Indiana's Expungement Law by the General Assembly, which require the BMV to comply with the existing federal and Indiana laws in question, should apply retroactively to J.S.'s case.

tap the power and dynamism of new media while still honoring the integrity and responsibilities that rightly fall to America's third great branch of government?

@incourts offers one approach to that question. Launched at the direction of former Indiana Chief Justice Randall Shepard, @incourts has 2,598 followers and has sent more than 970 tweets.

Followers include @PBhere/Courts-that-twitter, which offers a handy portal to tweets from state-level Courts around the country, including Appellate Courts.

Even the U.S. Supreme Court has a Twitter account, @USSupremeCourt.

True, a typical Court tweet isn't exactly "Keeping up with the Kardashians" material. Judge Kimye is not in session! But tweets and retweets about anticipated opinions or new Court procedures can be of significant service to a host of professional, media and lay people who closely follow the law and legal developments.

Having said all that, the Courts and

social media aren't exactly locked in tight embrace. According to the above-mentioned survey (conducted by the Conference of Court Public Information Officers), less than 7 percent of Courts have social media profile sites such as Facebook, and only 7 percent use Twitter or similar microblogging tools.

Ethical concerns may explain those low adoption rates. Almost half the judges who responded to the survey disagreed with the idea that they could use social media in their professional lives without compromising professional codes of conduct.

As Judge Edward W. Najam Jr., of the Court of Appeals of Indiana has said, "A court speaks through its opinions" and not through public commentary in new or old media.

As always, the future requires a "stay tuned" caveat. But who would be surprised if young people and their still-evolving dance with social media end up shaping the Courts' approach to new media in unexpected ways?

Attorneys for the Parties

For the Appellant

Kyle Hunter has been with the Office of the Indiana Attorney General since early 2012, where he has worked in both the Criminal and Civil Appeals Section. Mr. Hunter was raised in West Lafayette, IN and graduated from Indiana University in 2007, with a BFA in Drawing and Painting.

He earned his law degree from Indiana University Robert H. McKinney School of Law in 2012, where he was President of the J. Rueben Clark Law Society and a charter member of the Fashion, Art, and Design Law Society.

Mr. Hunter is a member of the Indiana State and Indianapolis Bar Associations, and an active member of the Indianapolis arts community. Mr. Hunter and his wife have four children.

For the Appellee

Bryan L. Cook grew up in rural Francesville, IN, about halfway between Indianapolis and Chicago. He was admitted to the Indiana bar in 1995 and is also admitted to practice before the United States District Court in the Northern and Southern Districts of Indiana. He received a B.S. from the Kelley School of Business at Indiana University-Bloomington in 1992 and earned his law degree from Indiana University School of Law-Indianapolis in 1995. He was a certified legal intern in the criminal defense clinic in law school, where he obtained felony jury trial experience as part of his course work.

He has been in private practice for 20 years handling mostly criminal defense cases and select civil cases (i.e., automobile crashes) mostly in central Indiana. He is a member of the Indiana State Bar Association and a former member of the National Association of Criminal Defense Attorneys.

Although he is primarily a trial lawyer (having tried more than 100 jury trials as well as hundreds of bench trials), his experience includes handling numerous criminal appeals. This happens to be his 2nd appellate oral argument in a criminal case; his last oral argument was just 2 years ago in the Indiana Court of Appeals in another interesting case selected for the "Appeals on Wheels" program.

Today's Panel of Judges



**The Honorable
Cale J. Bradford**

Marion County

Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from the McKinney School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indi-

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**The Honorable
James S. Kirsch**

Marion County

James S. Kirsch was appointed to the Court of Appeals in 1994, was re-elected by election in 1996 and 2006 and served as Chief Judge from 2004-2007. He also has served as a state trial court judge and has extensive national and international teaching experience.

A native of Indianapolis, Judge Kirsch graduated from Indiana University School of Law-Indianapolis (J.D., cum laude) and Butler University (B.A. with honors).

He served as Judge of the Marion Superior Court from 1988 to 1994 and as Presiding Judge of the Court in 1992. From 1974-1988, he practiced law with the firm of Kroger, Gardis & Regas in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. He has taught law in 21 countries on four continents and currently holds university-level faculty appointments in Germany, Hungary and the Netherlands.

Judge Kirsch is also committed to continuing legal education and has served on the faculty of more than 200 CLE programs. In 1990, the Indianapolis Bar Association presented him with its highest award, the Honorable Paul H. Buchanan Award of Excellence.

Judge Kirsch also has deep ties to the Indiana State Bar Foundation, the Indianapolis Bar Association and Bar Foundation and to community organizations that include the United Way of Central Indiana, the Indianapolis Urban League, the Legal Aid Society of Indianapolis and the Stanley K.

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**The Honorable
Robert R. Altice, Jr.**

Marion County

Robert R. Altice, Jr., was appointed to the Court of Appeals by Governor Mike Pence and began his service on Sept. 2, 2015.

Judge Altice earned his undergraduate degree from Miami University, Oxford, OH. Subsequently, he obtained a master's degree in criminal justice administration from the University of Central Missouri, where he was honored as "Graduate Student of the Year" in his department. He received his law degree from the University of Missouri-Kansas City School of Law.

Judge Altice's legal career began in Jackson County, MO, handling felony cases as a deputy prosecutor before being promoted to Chief Deputy Prosecutor for the Drug Unit. He then practiced with a Kansas City civil law firm, focusing on medical malpractice defense. After moving to Indianapolis, he joined the law firm of Wooden McLaughlin & Sterner, concentrating on insurance defense.

In 1994, Judge Altice returned to prosecution, handling a major felony caseload as a deputy prosecutor for the Marion County Prosecutor's Office. He served as Chief of the Felony Division from 1997 to 2000, prosecuting a number of high-profile felonies while also providing management support to 35 deputy prosecutors. Judge Altice briefly served as the Office's Chief Counsel, working with the Indiana General Assembly to amend laws on domestic battery and possession of firearms by violent felons. As a prosecutor, he tried more than 100 major felony jury trials, including 25 murder cases and countless bench trials.

Judge Altice was elected to the Marion County bench in 2000 and presided over both criminal and civil dockets. As judge of Marion Superior Court, Crimi-

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